

**MAR 31 1979**

**MICHAEL RODAK, JR., CLERK**

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1978

No. 78-1364

JOAN RUDOLPH,  
Petitioner,

v.

WAGNER ELECTRIC CORPORATION,  
Respondent.

**BRIEF**

**Of Wagner Electric Corporation in Opposition to Granting a  
Writ of Certiorari to the United States Court of Appeals  
for the Eighth Circuit**

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This Petition for a Writ of Certiorari should be denied as there is absolutely no basis alleged for granting the Writ. There are no "special and important reasons therefor" and the petition does not set forth any of the grounds for Certiorari under Rule 19.

## REASONS FOR DENYING THE WRIT

### I

#### None of the Reasons for Granting the Writ Set Forth in Rule 19(1)(b) Apply Here.

Petitioner, in seeking a writ of certiorari, cites none of the reasons listed in Rule 19(1)(b) as warranting review by this Court. The reason is apparent. None of these reasons are applicable to this case. There are no special or important reasons for review by this Court of the decision of the Court of Appeals of the Eighth Circuit in this case.

The Court of Appeals neither decided new questions of federal law not covered in this Court's decision in *Electrical Workers, Local 790 v. Robbins and Myers, Inc.*, 429 U.S. 229 (1976), nor decided any issue in conflict with other applicable decisions of this Court.

Addressing Petitioner Rudolph's basic contention in the Court of Appeals that an arbitrator's adverse decision on her discharge grievance, not the discharge itself, began the 180-day limitations period for filing her charge of discrimination with the Equal Employment Opportunity Commission, the Court of Appeals stated:

"This argument has implicitly been rejected by this court, and has specifically been rejected by the Supreme Court in *International Union of Electrical Workers, Local 790 v. Robbins and Myers, Inc.*, 429 US 229, 234-5 (1976).

"Rudolph alleges her fact situation can be distinguished from *Electrical Workers* primarily because Rudolph considered the arbitration decision to be the final disposition, and thus the 'occurrence,' and she did not consider the February 1973 discharge as final. However, this claim

amounts to no more than the bare assertion raised by the plaintiffs in *Electrical Workers*." (Appendix to Petition for Certiorari, 2-3; 586 F.2d 90 at 91-92).

The Court of Appeals' decision in this case conflicts with no decision of any other Court of Appeals ruling on either of the questions which Petitioner would present to this Court. The Court of Appeals decisions cited by Petitioner predate this Court's decision in *Electrical Workers*, which resolved those questions.

### II

#### The Basic Issues Which Petitioner Would Present to This Court Were Resolved by This Court's Decision in *Electrical Workers, Local 790 v. Robbins and Myers, Inc.*

The basic reason which Petitioner does cite for granting the writ is that the issue of whether this Court's *Electrical Workers* decision should be applied retroactively remains unresolved.

This contention cannot be reconciled with this Court's decision there which was applied to the parties in that suit. Nowhere in the Opinion in that case does this Court state or intimate that the decision is to be given prospective effect only.

The factors which are to be considered in determining whether to give decisions only prospective application have been set forth in *Chevron Oil Co. v. Huson*, 404 US 97 (1971). This Court decided that those factors did not dictate such limited application of its *Electrical Workers* decision. The issue has been resolved.

Moreover, the Court of Appeals reviewed the issue itself, applied the factors set forth in *Chevron*, *supra*, expressly, and concluded that application of this Court's decision in the *Electrical Workers* case to Petitioner Rudolph was warranted, and

that retroactive application better served the *Chevron* standards. (Appendix to Petition for Certiorari, 6-10; 586 F.2d 90 at 93-96).

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

D. J. SULLIVAN

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